

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 95008

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-030-95

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

For Filing Administrative
Regulations

For Emergency
Regulations Only

Effective Date _____

Expiration Date _____

Governor's Signature

Nevada State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: **Petition 95008** permanently amends NAC 444.570 to 444.7499, the solid waste regulations, to extend the date by which disposal sites must obtain financial assurance from April 9, 1995 to April 9, 1997. In addition, reference to incorrect citations of the Nevada Administrative Code in NAC 444.684, 444.6852 and 444.731 are corrected. NAC 444.692 was amended to remove an inappropriate reference to the term "solid sewage". NAC 444.711 and 444.7481 are amended to clarify the criteria to comply with ground water monitoring requirements for Class II disposal sites.

Authority citation other than 233B: NRS 444.560

Notice date: August 31, September 6, September 12, 1995

Hearing date: October 3, 1995

Date of Adoption of Agency: October 3, 1995

PETITION 95008
LCB FILE R-030-95

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

2. The number persons who:

- 3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.**

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted at the State Environmental Commission hearing on October 3, 1995 with no changes proposed by the public, businesses or the agency. This regulations was previously adopted as a temporary regulation on April 4, 1995.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
 - (b) Both immediate and long-term effects.
- a. The adopted technical revisions will have no economic effect on the public. By potentially decreasing the cost of meeting the financial assurance requirements for Class I sites, the adoption of this amendment may help to reduce the public costs of solid waste management.
 - b. There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations which the proposed amendments duplicate.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

These regulations are consistent with federal regulations and they are not more stringent than the federal regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide for a new fee, and hence since no fee is involved there is not a total amount expected to be collected or used.

ADOPTED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R030-95

Explanation: Matter in *italics* is new; matter in [] is material to be omitted. Matter in *italics* is new language.

AUTHORITY: NRS 444.560

Section 1. NAC 444.684 is hereby amended to read as follows:

444.684 The plan for operating a Class I site must:

1. Include a description of the equipment and persons necessary to operate the site;
2. Provide for:
 - (a) Adequate fire control methods to extinguish and prevent the spread of accidental fires;
 - (b) The prevention of scattering of papers and other lightweight debris by portable litter fences or other suitable devices; and
 - (c) The disposal of any special wastes specifically permitted by the solid waste management authority;
3. Show how the site will comply with the requirements set forth in NAC [444.665] to *444.6665* to 444.6678, inclusive, and 444.686 to 444.7025, inclusive; and
4. Include a plan of action to be taken in the event of an emergency which might occur at the site. The plan must include, without limitation, an organized, coordinated and technically and financially feasible course of action to be taken:
 - (a) If a fire occurs at the site, including identifying the nearest fire department and how and under what circumstances the fire department will be notified.
 - (b) To protect the safety of personnel and users of the site, including training for employees on first aid and the availability of emergency services. The site must have a telephone, radio or other similar communication device to enable the personnel to contact the appropriate providers of emergency services.
 - (c) To shut down the site because of inclement weather or an act of God.
 - (d) If equipment breaks down, including the provision for and a description of backup equipment.
 - (e) If hazardous or toxic materials are released from the site.

(f) If the presence of leachate is detected in a structure for the collection of leachate which was previously dry, or if a spill or leak occurs at a tank or surface impoundment for the storage of leachate.

Sec. 2. NAC 444.6852 is hereby amended to read as follows:

444.6852 1. An owner or operator of a municipal solid waste landfill unit required to undertake a plan for corrective action pursuant to NAC 444.7497, 444.7498 and 444.7499, shall obtain a detailed written estimate, in current dollars, of the cost of hiring a third person to perform the corrective action in accordance with that plan. The estimate of the corrective action must account for the total cost of activities for corrective action as described in the plan for corrective action for the period of the plan. The owner or operator shall notify the solid waste management authority that the estimate has been placed in the operating records of the unit.

2. The owner or operator shall annually adjust the estimate for inflation until the plan for corrective action is completed in accordance with NAC 444.7497, 444.7498 and 444.7499.

3. The owner or operator shall increase the estimate for corrective action and amount of financial assurance if changes in the plan for corrective action or conditions at the municipal solid waste landfill unit increase the maximum costs of the corrective action.

4. The owner or operator may reduce the amount of the estimate for corrective action and amount of financial assurance if the estimate exceeds the maximum remaining costs of the corrective action. The owner or operator shall notify the solid waste management authority that the justification for the reduction has been placed in the operating records of the unit.

5. The owner or operator of each municipal solid waste landfill unit required to undertake a plan for corrective action pursuant to NAC 444.7497, 444.7498 and 444.7499, shall establish, in accordance with NAC 444.68525 to **[444.6849] 444.6859**, inclusive, financial assurance for the most recent plan for corrective action. The owner or operator shall provide continuous coverage for corrective action until released by the solid waste management authority from the requirements of financial assurance for corrective action by demonstrating compliance with NAC 444.7499.

Sec. 3. NAC 444.6853 is hereby amended to read as follows:

444.6853 1. An owner or operator may satisfy the requirements of NAC 444.685 by establishing a trust fund which conforms to the requirements of this section. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be placed in the operating records of the disposal site.

2. The owner or operator shall annually make payments into the trust fund over the term of the period for payment into the fund.

3. If a trust fund is used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the current estimate of the cost for closure or postclosure,

except as otherwise provided in NAC 444.6857, divided by the number of years of the period for payment into the fund. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where:

CE is the current estimate for closure or postclosure, as adjusted for inflation or other changes.

CV is the current value of the trust fund.

Y is the number of years remaining in the period for payment into the fund.

4. If a trust fund is used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current estimate of the cost for corrective action, except as otherwise provided in NAC 444.6857, divided by the number of years in the period for payment into the fund. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB}-\text{CV}}{\text{Y}}$$

where:

RB is the most recent estimate of the required balance in the trust fund needed for corrective action.

CV is the current value of the trust fund.

Y is the number of years remaining in the period for payment into the trust fund.

5. The owner or operator shall:

(a) For a trust fund for closure and postclosure, obtain and make the initial payment into the trust fund before April 9 [1995,] 1997, or the initial receipt of solid waste, whichever is later.

(b) For a trust fund for corrective action, obtain the trust fund and make the initial payment into the trust fund no later than 120 days after the remedy for corrective action has been selected in accordance with the requirements of NAC 444.7497, 444.7498 and 444.7499.

(c) Maintain the trust fund until he is no longer required to demonstrate financial responsibility pursuant to NAC 444.6851, 444.68515 and 444.6852.

6. If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in NAC 444.68525, the first payment into the trust fund must be at least equal to the amount which the fund would have contained if the trust fund were established initially and annual payments made pursuant to this section.

7. The owner, operator or any other person authorized to conduct activities for closure, postclosure or corrective action may request reimbursement from the trustee for related expenditures. Requests for reimbursement may be granted by the trustee only if sufficient money is remaining in the trust fund to cover

the remaining costs of closure, postclosure or corrective action, and if justification and documentation of the cost is placed in the operating records of the disposal site. The owner or operator shall notify the solid waste management authority that the documentation of the justification for reimbursement has been placed in the operating records and that reimbursement has been received.

8. The owner or operator may terminate the trust fund only if he substitutes alternate financial assurance as specified in this section or is no longer required to demonstrate financial responsibility in accordance with the requirements of NAC 444.6851, 444.68515 or 444.6852.

9. As used in this section, "period for payment into the fund" means:

(a) In the case of a trust fund for closure or postclosure, the remaining life of the municipal solid waste landfill unit.

(b) In the case of a trust fund for corrective action, over one-half of the estimated length of the program for corrective action.

Sec. 4. NAC 444.68535 is hereby amended to read as follows:

444.68535 1. An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a surety bond guaranteeing payment or performance which conforms to the requirements of this section. An owner or operator may demonstrate financial assurance for corrective action by obtaining a surety bond guaranteeing performance which conforms to the requirements of this section.

2. A bond must:

(a) If for closure and postclosure, be obtained by the owner or operator and become effective before April 9, ~~[1995]~~ 1997, or the initial receipt of waste, whichever is later.

(b) If for corrective action, be obtained by the owner or operator and become effective no later than 120 days after the remedy for corrective action has been selected in accordance with the requirements of NAC 444.7497, 444.7498 and 444.7499.

(c) Be maintained until the owner or operator is no longer required to demonstrate financial responsibility pursuant to NAC 444.6851, 444.68515 and 444.6852.

3. The owner or operator shall notify the solid waste management authority that a copy of the bond has been placed in the operating records of the disposal site.

4. The surety company issuing the bond must be among those listed as an acceptable surety on federal bonds in Circular 570 of the U.S. Department of the Treasury which is published each July in the Federal Register.

5. Except as otherwise provided in NAC 444.6858, the sum of the bond must be in an amount at least equal to the current estimate for closure, postclosure or corrective action, whichever is applicable.

6. The surety must become liable on the bond if the owner or operator fails to make payments or perform as guaranteed by the bond.

7. In addition to obtaining the surety bond, the owner or operator shall establish a trust fund. The trust fund must meet the requirements of NAC 444.6853, except the requirements for initial payment and

subsequent annual payments specified in that section.

8. The surety shall deposit payments made under the terms of the bond directly into the trust fund. Payments from the trust fund must be approved by the trustee.

9. The terms of the bond must authorize the surety to cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the solid waste management authority at least 120 days before cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in NAC 444.68525 to 444.6859, inclusive.

10. The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in NAC 444.68525 to 444.6859, inclusive, or the owner or operator is no longer required to demonstrate financial responsibility in accordance with NAC 444.6851, 444.68515 or 444.6852.

Sec. 5. NAC 444.6854 is hereby amended to read as follows:

444.6854 1. An owner or operator may satisfy the requirements of NAC 444.685 by obtaining an irrevocable letter of credit which conforms to the requirements of this section.

2. A letter of credit must:

(a) If for closure and postclosure, be obtained by the owner or operator and become effective before April 9, **[1995] 1997**, or the initial receipt of waste, whichever is later.

(b) If for corrective action, be obtained by the owner or operator and become effective no later than 120 days after the remedy for corrective action has been selected in accordance with the requirements of NAC 444.7497, 444.7498 and 444.7499.

(c) Be maintained until the owner or operator is no longer required to demonstrate financial responsibility pursuant to NAC 444.6851, 444.68515 and 444.6852.

3. The owner or operator shall notify the solid waste management authority that a copy of the letter of credit has been placed in the operating records of the disposal site.

4. The issuing institution must be an entity which has the authority to issue letters of credit and whose operations are regulated and examined by a federal or state agency.

5. A letter from the owner or operator must be filed with the letter of credit in the operating records that includes:

(a) A reference to the letter of credit by number;

(b) The issuing institution;

(c) The date of issuance;

(d) The name of the owner or operator;

(e) The address of the disposal site; and

(f) The amount of money assured.

6. Except as otherwise provided in this section, the letter of credit must be irrevocable and issued for a period of at least 1 year in an amount at least equal to the current estimate for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be

automatically extended for a period of at least 1 year unless the issuing institution has canceled the letter of credit.

7. The terms of the letter of credit must authorize the issuing institution to cancel the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the solid waste management authority at least 120 days before the cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance.

8. The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in NAC 444.68525 to 444.6859, inclusive, or the owner or operator is released from the requirements of this section in accordance with NAC 444.6851, 444.68515 or 444.6852.

Sec. 6. NAC 444.6855 is hereby amended to read as follows:

444.6855 1. An owner or operator may demonstrate financial assurance for closure and postclosure by obtaining insurance which conforms to the requirements of this section.

2. The insurance must:

(a) Be obtained by the owner or operator and become effective before April 9, ~~[1995]~~ 1997, or the initial receipt of waste, whichever is later; and

(b) Be maintained until the owner or operator is no longer required to demonstrate financial responsibility pursuant to NAC 444.6851, 444.68515 and 444.6852.

3. The insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in this state.

4. The owner or operator shall notify the solid waste management authority that a copy of the policy of insurance has been placed in the operating records of the disposal site.

5. The policy of insurance must guarantee that money will be available to close the municipal solid waste landfill unit whenever final closure occurs or to carry out a program for postclosure whenever the period of postclosure begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer is responsible for paying money to the owner, operator or any other person authorized to conduct the closure or postclosure, up to an amount equal to the face amount of the policy.

6. Except as otherwise provided in NAC 444.6853, the policy of insurance must be issued for a face amount at least equal to the current estimate for closure or postclosure, whichever is applicable. Actual payments by the insurer must not change the face amount, although the insurer's future liability may be lowered by the amount of the payments.

7. An owner, operator or any other person authorized to conduct the closure or postclosure may receive reimbursements for related expenditures. Requests for reimbursement may be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of the closure or postclosure, and if justification and documentation of the cost is placed in the operating records of the disposal site. The owner or operator shall notify the solid waste management authority that documentation of the justification for reimbursement has been placed in the operating records and that reimbursement has

been received.

8. Each policy of insurance must contain a provision allowing the assignment of the policy to a successor owner or operator. The assignment may be conditional upon the consent of the insurer, if the consent is not unreasonably refused.

9. The policy of insurance must provide that the insurer may not cancel, terminate or fail to renew the policy except for a failure to pay the premium. An automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner, operator and solid waste management authority at least 120 days before the cancellation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in NAC 444.68525 to 444.6859, inclusive.

10. If a policy of insurance provides coverage for postclosure, the insurer shall, commencing on the date that liability to make payments pursuant to the policy accrues, annually increase the face amount of the policy. The increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equal to 85 percent of the most recent rate of interest for or 85 percent of the equivalent yield announced by the United States Treasury for 26-week treasury bills.

11. The owner or operator may cancel the policy of insurance only if he substitutes alternate financial assurance in accordance with NAC 444.68525 to 444.6859, inclusive, or he is no longer required to demonstrate financial responsibility in accordance with the requirements of NAC 444.6851, 444.68515 and 444.6852.

12. As used in this section, "face amount" means the total amount the insurer is obligated to pay under the policy.

Sec. 7. NAC 444.6856 is hereby amended to read as follows:

444.6856 1. An owner or operator may satisfy the requirements of NAC 444.685 by obtaining any other mechanism which:

(a) Meets the criteria specified in NAC 444.6859; and

(b) Is approved by the solid waste management authority.

2. A mechanism obtained pursuant to this section must be obtained by the owner or operator:

(a) For closure and postclosure, by April 9, **[1995] 1997**, or before the initial receipt of waste, whichever is later.

(b) For corrective action, no later than 120 days after the remedy for corrective action has been selected in accordance with the requirements of NAC 444.7497, 444.7498 and 444.7499.

(c) Maintained until the owner or operator is no longer required to demonstrate financial responsibility pursuant to NAC 6851, 444.68515 and 444.6852.

Sec. 8. NAC 444.692 is hereby amended to read as follows:

444.692 1. An owner or operator of a Class I site shall restrict the types and amounts of liquids **[and solid sewage]** disposed of in a Class I site except as permitted by the solid waste management authority in accordance with subsections 2 and 3.

2. Liquids which are in bulk or not in containers may not be placed in a municipal solid waste landfill unit unless:

(a) The waste is household waste other than septic waste; or

(b) The waste is leachate or gas condensate from the municipal solid waste landfill unit and the new or existing unit or lateral expansion is designed with a composite liner and system for the collection of leachate as described in NAC 444.681.

3. Containers holding liquid waste may not be placed in a municipal solid waste landfill unit unless:

(a) The container is a small container similar in size to a container which would normally be found in household waste;

(b) The container is designed to hold liquids for use other than storage; and

(c) The liquid waste is household waste.

4. As used in this section, "liquid waste" means any waste material which is determined to contain free liquids as a result of a paint filter liquids test, Method 9095, described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," Environmental Protection Agency, Publication No. SW-846.

Sec. 9. NAC 444.731 is hereby amended to read as follows:

444.731 1. Except as otherwise provided in subsections 2 and 3, each Class III site must comply with the standards for location, design, construction, operation and maintenance set forth in NAC 444.733 to 444.747, inclusive.

2. A solid waste management authority may adopt less restrictive standards for a Class III site which receives waste material which is inert or unlikely to create an environmental hazard or threaten the health of the general public.

3. A solid waste management authority may waive the requirements for a Class III site if the owner or operator of that site demonstrates that:

(a) All waste which is placed in the landfill is incidental to his industrial operation;

(b) The landfill is located on property controlled by the operator of the industrial operation; and

(c) The landfill will not receive any hazardous materials and is unlikely to produce pollutants or contaminants that may degrade waters of the state.

4. An owner or operator who applies for a waiver must submit a plan to the solid waste management authority for approval. The plan must include:

(a) A description of the type and estimated amount of material which will be placed in the landfill; and

(b) A program for the maintenance of the site.

5. As used in this section, "hazardous material" has the meaning ascribed to it in NRS **[459.700]**

Sec. 10. NAC 444.7481 is hereby amended to read as follows:

444.7481 1. The requirements for monitoring ground water set forth in NAC 444.7483 to 444.7492, inclusive, may be suspended by a solid waste management authority for a municipal solid waste landfill unit **[in a Class I site]** if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that unit to the uppermost aquifer during the active life of the unit, including the period of closure and postclosure. The demonstration must be certified by a qualified ground-water scientist and approved by the solid waste management authority. The demonstration must be based upon:

(a) Measurements collected at specific field sites and the sampling and analysis of physical, chemical and biological processes affecting the fate and transportation of contaminants; and

(b) Predictions of the fate and transportation of contaminants which are based on the maximum possible rate of the migration of the contaminants and a consideration of the impacts on public health and safety and the environment.

2. Except as otherwise provided in NAC 444.7482, the owner or operator of a municipal solid waste landfill unit in a Class I site shall comply with the requirements for monitoring ground water according to the following schedule:

(a) An existing municipal solid waste landfill unit and lateral expansion that is less than 1 mile from a surface or subsurface intake for drinking water must comply with NAC 444.7483 to 444.7492, inclusive, by October 9, 1994.

(b) An existing municipal solid waste landfill unit and lateral expansion that is at least 1 mile but less than 2 miles from a surface or subsurface intake for drinking water must comply with NAC 444.7483 to 444.7492, inclusive, by October 9, 1995.

(c) An existing municipal solid waste landfill unit and lateral expansion that is at least 2 miles from a surface or subsurface intake for drinking water must comply with NAC 444.7483 to 444.7492, inclusive, by October 9, 1996.

(d) A new municipal solid waste landfill unit must comply with NAC 444.7483 to 444.7492, inclusive, before waste may be placed in the unit.

3. Once monitoring of ground water begins at a municipal solid waste landfill unit, the owner or operator of the unit shall continue to monitor the ground water throughout the active life of the unit, including the period of closure and postclosure, as specified in NAC 444.6894.

END OF LCB FILE NO. R030-95